85-594

No._____

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1985

DEAN A. and BARBARA J. ROSTAD,
Respondents,

vs.

ON-DECK, INC., a New Jersey corporation,
Petitioner,

and

GARY GUY WILLEY, and GENERAL SPORTCRAFT, INC., a corporation,
Defendants.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

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I. QUESTIONS PRESENTED FOR REVIEW

1. Whether a state court's exercise of personal jurisdiction over a small foreign corporation (3 to 5 employees) violates the Due Process clause of the Fourteenth Amendment in a product liability action where the foreign corporation had no direct contacts with the forum and where there is no evidence that the product reached the forum in the stream of commerce.

2. Whether a state court's exercise of personal jurisdiction over a small foreign corporation that is based upon the forum's interest in the litigation and the convenience of the plaintiffs violates the Due Process clause of the Fourteenth Amendment.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

II. OPINION BELOW

The Supreme Court of the State of Minnesota filed its Opinion on August 16, 1985. It has not yet been reported. A copy of that Opinion is located in the Appendix at A-1.

The Opinion of August 16, 1985 affirmed an Opinion of the Minnesota Court of Appeals filed on September 4, 1984. That Opinion has been reported at *Rostad v. On-Deck, Inc.*, 354

N.W.2d 95 (Minn.App. 1984), and appears in the Appendix at A-11.

The Minnesota Court of Appeals Opinion of September 4, 1984 reversed a Judgment entered in the Fourth Judicial District Court, County of Hennepin, State of Minnesota entered pursuant to an Order and Memorandum of the trial court dated December 22, 1983. The trial court dismissed On-Deck, Inc. for lack of personal jurisdiction. That Opinion is not reported. A copy of it appears in the Appendix at A-20.

III. GROUNDS UPON WHICH JURISDICTION IS INVOKED

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1257(3) and Rule 17(1)(b) and (c) of the Rules of the Supreme Court of the United States. This petition is timely filed within the 90-day period provided in 28 U.S.C. 2101(c).

The date of the Opinion of the Supreme Court of Minnesota was August 16, 1985.

IV. CONSTITUTIONAL CLAUSE INVOLVED

The questions presented in this Petition for Writ of Certiorari involve the Due Process clause of the Fourteenth Amendment to the United States Constitution:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

V. STATEMENT OF THE CASE

A. Facts Of The Incident.

In May 1978, Defendant Gary Guy Willey *found* a bat weight in a ballfield in St. Louis Park, Minnesota. A bat weight is a product used to assist baseball players in warming up before batting. There is no evidence as to where the bat weight was purchased, who purchased it, or how it came to Minnesota. *The bat weight was merely fortuitously found in a field in Minnesota.* No product packaging was found with the bat weight.

After finding the bat weight, Mr. Willey allowed his teammates on the Golden Leaf Bar Softball team to use it during the 1978 softball season. The bat weight was designed for use on baseball bats, and not softball bats.

On August 6, 1978 respondent Dean A. Rostad was the umpire in a softball game between Mr. Willey's team and another team. It is alleged that during the course of the game, the bat weight released from a bat and struck Mr. Rostad.

For purposes of this appeal only, On-Deck, Inc. admits that it manufactured the bat weight.

B. Facts Regarding Personal Jurisdiction.

On-Deck, Inc. ("On-Deck") is a New Jersey corporation with its only office in Westwood, New Jersey. On-Deck has always been a small, closely held corporation with between three and five employees. It has never had a direct contact with the State of Minnesota. On-Deck has never owned, leased or possessed property in Minnesota; has never had an office, sales outlet or place of business in Minnesota; has never been licensed to do business in Minnesota; has never had an agent for service of process in Minnesota; has never had a mailing

address or telephone listing in Minnesota; has never solicited business in Minnesota; has never advertised in Minnesota; has never sold any products in Minnesota; has never had a bank account in Minnesota; and has never entered into a contract with a Minnesota resident. (See Affidavit of Frank Hamilton, Appendix at A-23). On-Deck has never had a direct contact with Minnesota.

Between 1968 and 1973, On-Deck sold bat weights to General Sportcraft, a distributor of general sporting goods items and a separate and distinct corporate entity. Since 1973, On-Deck sold bat weights to other distributors.[1] On-Deck was never a party to, nor involved with, any subsequent sales or promotions by General Sportcraft. On-Deck never made any sales in Minnesota, and was never aware of the specific states into which bat weights were distributed.

Respondents allege that General Sportcraft distributed bat weights into Minnesota. However, Respondents do not allege that the bat weight at issue in this case was distributed into Minnesota. *Respondents do not claim that the subject product reached Minnesota in the stream of commerce.* The subject product was, by random chance, found in a field in Minnesota.

C. Stages In Proceedings At Which Federal Questions Were Raised.

On April 11, 1980, Respondents commenced this action in the Fourth Judicial District Court, County of Hennepin, State of Minnesota against On-Deck. On April 24, 1980, On-Deck served its answer, setting up lack of personal jurisdiction as its second affirmative defense. General Sportcraft, the alleged distributor, has also been joined as a party defendant.

---

[1] Any sales after 1973 are irrelevant since Respondents claim that the subject bat weight was manufactured before 1973.

On December 9, 1983, On-Deck moved the trial court for an order dismissing the complaint on the ground that an exercise of personal jurisdiction would violate the Due Process clause of the Fourteenth Amendment to the United States Constitution. On-Deck argued that the Due Process clause as interpreted by the Supreme Court of the United States prohibited an exercise of jurisdiction.

On December 22, 1983, the trial court granted On-Deck's motion, dismissed the complaint for lack of personal jurisdiction and ordered judgment in favor of On-Deck. The trial court based its ruling upon the federality concepts of the United States Constitution and the Due Process clause.

Respondents prosecuted an appeal to the Minnesota Court of Appeals. On-Deck argued that an exercise of jurisdiction by Minnesota courts would violate the Due Process clause of the United States Constitution. The Minnesota Court of Appeals rendered its Opinion on August 28, 1984 which reversed the trial court's order and ruled that an exercise of jurisdiction would not violate the Due Process clause.

On-Deck petitioned the Supreme Court of Minnesota for Review of the Opinion of the Minnesota Court of Appeals, arguing that the Due Process clause of the United States Constitution would be violated if jurisdiction were exercised. The Petition for Review was granted by the Supreme Court of Minnesota on February 5, 1985, which rendered its Opinion on August 16, 1985; ruling that the Due Process clause would not be violated.

VI. ARGUMENT FOR GRANTING THE WRIT

1. The Opinion Of The Supreme Court Of Minnesota Conflicts With Opinions Of Federal Courts Of Appeal.

The Supreme Court of Minnesota held that a product manufacturer is subject to jurisdiction in a state in which products it makes are found by utilizing a "stream of commerce" theory, *despite the fact that there is no evidence the product reached the state in the stream of commerce and despite the fact that the manufacturer has no contacts whatsoever with the state.* This holding is in direct conflict with the case of *Humble v. Toyota Motor Co. Ltd.*, 727 F.2d 709 (8th Cir. 1984). There, a foreign corporation manufactured automobile seats which were sold to Toyota Motors in Japan. The automobiles were sold in California by Toyota and distributed throughout the United States. The plaintiff was injured by defects in the car seats after purchasing a car in Iowa. The manufacturer had no direct contacts with Iowa, and had no offices, bank accounts, telephone listings, or mailing addresses there. All distribution and marketing was by Toyota. The court, relying on *Worldwide Volkswagen v. Woodson*, 444 U.S. 286 (1980), held there was no personal jurisdiction over the seat manufacturer in Iowa. Although the manufacturer may have foreseen that its products may be sold in Iowa, it could not reasonably anticipate this since it did not purposefully conduct any activities in the state.

The Opinion of the Supreme Court of Minnesota is also in direct conflict with *Glater v. Eli Lilly & Co.*, 744 F.2d 213 (1st Cir. 1984). There, plaintiff was injured by a drug manufactured by defendant. Plaintiff attempted to gain jurisdiction over the manufacturer in New Hampshire. The defendant ran advertisements in trade journals in New Hampshire, and

had eight employees working there with three of the employees living in the state. The manufacturer made no direct sales in New Hampshire. It sold products to wholesale distributors, some of which were located in New Hampshire. The court found no jurisdiction over the manufacturer. Although it had contacts with the forum, the court found those contacts unrelated to plaintiff's cause of action in that none of the New Hampshire sales could be tied to the product which caused plaintiff's injury. The court found that "a consideration of fundamental importance is whether the cause of action arises out of or is related to the defendant's contacts with the forum state." 774 F.2d at 215, citing *Keeton v. Hustler Magazine, Inc.*, 204 S.Ct. 1473 (1984). In the case at bar, Respondents' claim did not arise out of On-Deck's alleged contacts, since none of the Minnesota sales of products by others can be tied to the product allegedly causing Respondents' injuries.

The Opinion of the Supreme Court of Minnesota conflicts with the case of *Hutson v. Fehr Brothers, Inc.*, 584 F.2d 833 (8th Cir. 1978), *cert. denied* 439 U.S. 983 (1978). There, an Italian corporation sold a defective chain to another corporation having the exclusive right to sell the product throughout North America. The chain was ultimately distributed to a retailer in Arkansas who sold it to the plaintiff's employer. Plaintiff was injured by the defective chain. The court found no jurisdiction over the corporation since the connection it had "consist[ed] only of the fortuitous introduction of [its] products into the forum state through the decision of the [distributor]" and that it "did not consciously solicit or purposefully avail itself of the privilege to conduct business in the forum state as *Hanson* requires for the exercise of personal jurisdiction." 584 F.2d at 837.

2. The Opinion Of The Supreme Court Of Minnesota Conflicts With Decisions Of The Supreme Court Of The United States.

The Supreme Court of Minnesota held that personal jurisdiction can be exercised over a foreign corporation under a stream of commerce theory when it cannot be shown that the product arrived in the state in the stream of commerce, and based jurisdiction solely on the fact that *other* products were distributed into the forum by independent distributors *after* this product was manufactured. This holding conflicts with *International Shoe Company v. Washington*, 326 U.S. 310 (1945). There, the Supreme Court of the United States held:

> " 'Presence' in the state in this sense has never been doubted when the activities of the corporation there have not only been continuous or systematic, but also give rise to the liabilities sued on, even though no consent to be sued or authorization to an agent to accept service of process has been given. Conversely, it has been generally recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporation's behalf are not enough to subject it to suit on causes of action unconnected with the activities there." 326 U.S. at 317 (citations omitted).

Accordingly, if the cause of action does not arise from the contacts of the foreign corporation, there is no jurisdiction unless the corporation has conducted continuous and systematic activities directly in the forum. In the case at bar, the cause of action did not arise from On-Deck's activities in the forum. Since the subject product was merely found in a field and did not arrive in the state in the stream of commerce or through distribution of the product, the distribution of other

products by other independent corporations is irrelevant for jurisdiction purposes under the *International Shoe* precept. The fact that other products may have come to Minnesota in a marketing network is irrelevant since the cause of action did not arise from those products. The cause of action arose from a product that did not arrive in Minnesota in a marketing network. Accordingly, under *International Shoe*, there is no jurisdiction unless the corporation conducts systematic and continuous business directly in the state. Such facts do not exist here. For the same reasons, the holding of the court below conflicts with the case of *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 104 S.Ct. 1868 (1984). Again, this Court held that contacts consisting of the entry of an agent into the forum, the purchase of four million dollars of products in the forum, numerous visits to the forum by employees for training, and receipt of five million dollars of payments from the forum were insufficient for personal jurisdiction since the cause of action did not arise out of the contacts. Here, as there, Respondents' cause of action did not arise out of On-Deck's supposed indirect contacts.

The Opinion of the Supreme Court of Minnesota is in conflict with the case of *Hanson v. Denkla*, 357 U.S. 235 (1958). The United States Supreme Court, noting that the cause of action did not arise from the contacts allegedly supporting jurisdiction held:

> "[I]t is essential in each case that there be some activity by which the defendant purposefully avails itself of the privilege of conducting activities in the forum state, thus invoking the benefits and protections of its laws." 357 U.S. at 253.

This holding is contrary to the Opinion of the Minnesota Supreme Court. (A-1) The public policy underlying the Re-

spondents' stream of commerce theory is that a defendant "purposefully avails" itself of a forum by creating a distribution network causing products to reach the state. Here, however, the distribution network did not cause the product to reach the forum; *the product was found in a field with no evidence it arrived in the stream of commerce.* Therefore, On-Deck has not purposefully availed itself of the Minnesota forum and has conducted no activities in the forum.

The Opinion of the Supreme Court of Minnesota conflicts with the case of *Shaffer v. Heitner*, 433 U.S. 186 (1977), which held that no jurisdiction can be constitutionally exercised where the cause of action does not arise out of the defendant's contacts. *See*, 433 U.S. at 213. As noted above, Respondents' cause of action does not arise out of any product reaching Minnesota in the stream of commerce. Accordingly, jurisdiction cannot be exercised consistent with the Due Process clause.

The Opinion of the Supreme Court of Minnesota is in conflict with the cases of *Rush v. Savchuk*, 444 U.S. 320 (1980) and *Worldwide Volkswagen v. Woodson*, 444 U.S. 286 (1980). In those cases, it was held that in determining whether an exercise of personal jurisdiction is consistent with due process, "the inquiry must focus upon the relationship among the defendant, the forum and the litigation." *Rush v. Savchuk*, 444 U.S. at 327; *see also, Shaffer v. Heitner, supra*, 433 U.S. at 204. The *Rush* and *Worldwide Volkswagen* cases further held that the plaintiff's contacts with the forum are irrelevant; the only considerations for due process purposes are what contacts the defendant had with the forum. However, the Supreme Court of Minnesota based personal jurisdiction over On-Deck upon such factors as "Minnesota's interest in the litigation" and "the convenience of the parties", particularly the con-

venience of the Respondents who are Minnesota residents. *Rostad v. On-Deck, Inc., supra,* Slip Op. at p. 10, Appendix at A-10. Such considerations are contrary to the Due Process clause and the case law of the Supreme Court of the United States:

> "Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before tribunals of another state; *even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location* for the litigation, the Due Process clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment." *World-Wide Volkswagen v. Woodson, supra,* at 294 (emphasis supplied).

See also, Hanson v. Denkla, supra, at pp. 251, 254; *Rush v. Savchuk, supra,* at p. 332. By basing jurisdiction upon such factors as Minnesota's interest in the litigation and the convenience of the plaintiffs, the decision of the Supreme Court of Minnesota is patently violative of due process and the clear and unambiguous holdings of the Supreme Court of the United States. Those factors have no place in the due process paradigm.

The Opinion of the Supreme Court of Minnesota is in conflict with the case of *Worldwide Volkswagen v. Woodson,* 444 U.S. 286 (1980), where this court found no personal jurisdiction over New York and New Jersey corporations in Oklahoma when the corporations had no direct contacts with Oklahoma and the product reached the forum fortuitously. The court shattered the stream of commerce-foreseeability theory when it held:

> "[T]he foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." 444 U.S. at 297.

As recognized by this Court, if mere foreseeability were the rule, every seller of chattels would appoint the chattel as agent for service of process and amenability to suit would travel with the chattel. *See,* 444 U.S. at 296. Although the Court recognized in dicta there may be some situations where a product manufacturer takes direct affirmative efforts to serve the market in the forum and a consumer purchases the product in the forum that may not offend the due process clause. *See,* 444 U.S. at 297-98. That is not the case here. On-Deck took no steps to serve the Minnesota market; it merely sold products to a distributor and had no knowledge of where subsequent sales were made. It did not seek to serve the Minnesota market. There is no evidence the product reached the forum in the stream of commerce; it was merely found in the forum. If jurisdiction were upheld, every manufacturer would be subject to jurisdiction wherever its products wind up and however they get there. A manufacturer would in effect appoint the product as agent for service with amenability to suit traveling with the product. Such a result is contrary to the express holding of *Worldwide Volkswagen* and the Due Process clause of the Fourteenth Amendment. If a stream of commerce theory is to be applied at all, then at a minimum there should be a showing that the product reached the forum in the stream of commerce. There has been no such showing here.

3. The Opinion Of The Supreme Court Of Minnesota Conflicts With A Decision Of Another State Court Of Last Resort.

The Opinion of the Supreme Court of Minnesota is in conflict with the Supreme Court of Arizona decision in *Rowell Industries, Inc. v. Superior Court*, 117 Ariz. 400, 573 P.2d 91 (1977), which held that a manufacturer was not subject to the personal jurisdiction of Arizona courts due to the business activities and sales by distributors in the forum. In the case at bar, the Supreme Court of Minnesota based jurisdiction upon sales of other products, not the subject product, by distributors occurring after the subject product had been manufactured.

4. These Are Important Questions Of Federal Law Which Have Not Been, But Should Be Decided By This Court.

The Supreme Court of the United States has not decided a case concerning personal jurisdiction over a foreign product *manufacturer* having no direct contacts with the forum; and has never decided a case concerning the applicability of a stream of commerce jurisdiction theory in a products case when there is no showing that the product reached the forum in the stream of commerce.

These are important questions of federal law which are likely to recur, and which have been the subject of conflicting opinions among the federal courts of appeals and the state courts of last resort. If the Opinion of the Supreme Court of Minnesota were allowed to stand, the consequences to product manufacturers would be disastrous. A manufacturer would be subject to suit in distant forums with which it has had no direct contacts merely because a separate and independent corporation with which it does business also happens to do

business in the forum. And it would matter not whether the product reached the forum in channels of commerce; amenability to suit would travel with the product. Manufacturers would be subject to jurisdiction wherever the product landed and no matter how it arrived. The making and selling of a product would be analogous to appointing the product as agent for service of process with jurisdiction following the product.

The Due Process clause never contemplated such a result, which would in essence erase state lines and allow state courts to reach beyond the limits imposed upon them by their status as coequal sovereigns in a federal system. The Due Process clause limits the power of states to reach beyond its borders to subject a foreign corporation to suit when that corporation has no contacts, ties or relations with the state. The questions in this case involve the crucial issue of the power of states to subject foreign corporations to suit within the framework of the Due Process clause and the federal system of government.

VII. CONCLUSION

An exercise of personal jurisdiction over a small foreign corporation having no contacts with a forum violates due process. The application of a stream of commerce jurisdiction theory in a case in which it cannot be shown that the product reached the forum in the stream of commerce violates due process. Basing jurisdiction upon such factors as the interest of the forum in the case and the convenience to plaintiffs violates due process. Personal jurisdiction cannot constitutionally be asserted upon the fortuitous entry of a product into a forum.

If this Court does not grant certiorari in this case, the Minnesota courts will continue to assume jurisdiction in product liability cases based only upon the forum's interest in the litigation and the convenience of the plaintiff regardless of whether the product reached the forum in the stream of commerce.

Petitioner On-Deck, Inc. respectfully prays that a Writ of Certiorari issue to review the Opinion of the Supreme Court of Minnesota filed on August 16, 1985.

Respectfully submitted,

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APPENDIX

STATE OF MINNESOTA
IN SUPREME COURT

No. C2-84-235

DEAN A. and BARBARA J. ROSTAD,
Respondents,

vs.

ON-DECK, INC., petitioner,
Appellant,

GARY GUY WILLEY,
Respondent,

SPORTCRAFT COMPANY,
Respondent.

Court of Appeals, Yetka, J. Took no part, Coyne, J.
Filed August 16, 1985.

WAYNE TSCHIMPERLE
Clerk of Appellate Courts

SYLLABUS

A manufacturer who places a product in the stream of commerce with the expectation that the product will be used in another state is subject to the jurisdiction of that state's courts.

Affirmed.

Heard, considered, and decided by the court en banc.

OPINION

YETKA, Justice.

While umpiring a softball game in the Twin Cities, Dean Rostad was hit in the head by a metal ring used as a bat weight

that flew from the end of the bat of the batter who was warming up on deck. Rostad sued the manufacturer of the bat weight, On-Deck, Inc., in Hennepin County District Court. On-Deck moved that the case be dismissed for lack of personal jurisdiction. The trial court granted the motion and ordered entry of the judgment in On-Deck's favor. The judgment was entered on January 9, 1984. Rostad appealed to the Minnesota Court of Appeals on February 6, 1984. The court of appeals reversed the trial court. On-Deck petitioned this court for further review; the petition was granted. We affirm the court of appeals.

On-Deck, Inc., is a New Jersey corporation formed to manufacture a solid metal, vinyl covered weight. It is shaped like a donut so that it slips over the handle of a baseball bat, slides down and, ideally, lodges itself on the bat's barrel. A batter warming up will slip the weight on and swing the bat as hard as possible. If the bat's barrel is small enough, however, the weight can slip off the end and fly through the air. Just such an event happened in this case. A bat weight slipped off the end of a batter's bat and hit Dean Rostad, who was umpiring, in the head. The blow severely injured Rostad, who, after extensive hospitalization, still suffers, mental, motor, and verbal difficulties.

Although having no offices in Minnesota, owning no property in Minnesota, having no agent appointed in Minnesota, and not being licensed to do business in Minnesota, On-Deck has sold a great number of its bat weights here through distributors. From 1968, when the weight first went on the market, until 1973, On-Deck contracted with General Sportcraft to be the bat weight's exclusive distributor for the "continent of North America, the state of Hawaii, and all islands in the Caribbean Sea and the Gulf of Mexico." After

1973, On-Deck sold weights directly to national distributors such as Sears, K-Mart, and Hillerich & Bradsby Co.

On-Deck retained the right to sell and market to major league baseball teams. It required that its "On-Deck" trademark be prominently displayed on all packages of the bat weight. A picture of Elston Howard, former Yankee great and president of On-Deck, Inc., was prominently displayed on each package. Elston Howard and Frank Hamilton, the weight's inventor and owner of On-Deck, Inc., traveled the country extensively marketing the weight. Professional baseball teams were specifically targeted for marketing, presumably for the national exposure and stature that their use of the weight would provide.

The plaintiffs presented a number of sales receipts for purchases of bat weights from Minnesota sporting goods shops and departments. Affidavits from owners of sporting goods stores documented that the weights have been a popular product in Minnesota for a number of years. The Minnesota Twins have been buying the weights for at least 10 years. Nonetheless, Frank Hamilton has stated he never knew his bat weight was ever sold in Minnesota.

The bat weight that struck Rostad was found by Gary Willey at a ballfield in St. Louis Park where he worked as a groundskeeper. Willey brought the bat weight to softball games, including the game where Rostad was injured. There is no evidence as to how this particular bat weight found its way to Minnesota. For the purposes of this appeal only, On-Deck assumes that it manufactured the weight.

The issue in this case is whether Minnesota can exercise jurisdiction over a foreign corporation which sells products in Minnesota through distributors under a "stream of commerce" theory and when the plaintiffs cannot show how the particular product arrived in the state.

The plaintiffs seek personal jurisdiction over On-Deck, Inc., a New Jersey corporation, by Minnesota's long-arm statute. It allows jurisdiction over a defendant if that defendant "[c]ommits any act outside Minnesota causing injury or property damage in Minnesota." Minn. Stat. § 543.19, subd. 1(d) (1984). Since we have determined that the legislature intended the statute to have the maximum extraterritorial effect allowed under the due process clause of the federal constitution, the permissibility of an attempted exercise of jurisdiction may be tested by analyzing whether it meets constitutional muster. *Vikse v. Flaby*, 316 N.W.2d 276, 281 (Minn. 1980); Note, *Due Process and Long-Arm Jurisdiction in Minnesota*, 5 Wm. Mitchell L. Rev. 287, 314-16 (1979).

Due process requires that a defendant have minimum contacts with a jurisdiction before being required to defend against a lawsuit in that jurisdiction. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Requiring minimum contacts both protects a defendant from burdensome litigation in a far-flung jurisdiction and vindicates the status of states as co-equal sovereigns within the federal system. *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 291-92 (1980). To have minimum contacts, the defendant must have purposefully availed itself of the privilege of conducting activities within the jurisdiction. *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). In Minnesota, a five-factor test first enunciated in the Eighth Circuit case of *Aftanase v. Economy Baler Co.*, 343 F.2d 187, 197 (8th Cir. 1965), is used to determine if minimum contacts exist. It requires the court to evaluate:

(1) The quantity of contacts with the forum state,

(2) The nature and quality of contacts,

(3) The source and connection of the cause of action with these contacts,

(4) The interest of the state providing a forum,

(5) The convenience of the parties.

Vikse v. Flaby, 316 N.W.2d at 282. The first three factors are the most important, the last two of lesser importance. *Dent-Air, Inc. v. Beech Mountain Air Service, Inc.*, 332 N.W.2d 904, 907 (Minn. 1983).

1. The Quantity of the Contacts

Despite having sold thousands of its bat weights here, On-Deck claims it has no contacts with Minnesota. On-Deck points out that it has never had an office, sales outlet, place of business, or agent for service of process here. It claims it has never had a direct contact with Minnesota. This may be true, but it fails to account for On-Deck's numerous indirect contacts with Minnesota.

On-Deck ignores its indirect contacts with Minnesota because it believes that, after the United States Supreme Court's decision in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), "purposeful contacts" must be direct contacts. Placing a product in the stream of commerce that leads to a state does not subject a manufacturer to jurisdiction, according to On-Deck, because such contacts are indirect rather than direct. On-Deck's frontal assault on the stream-of-commerce theory of jurisdiction misconstrues *World-Wide Volkswagen*, ignores the Supreme Court's express recognition of the theory, forgets scholarly comment on the subject, and fails to account for the plethora of cases upholding jurisdiction under a stream-of-commerce theory.

The *World-Wide Volkswagen* case dealt with a regional distributor and a retail dealer of cars at the end of the distribution chain who were being hailed into court in a jurisdiction far from their areas of distribution simply because the plaintiff had driven the car to that jurisdiction. *Id.* at 289. Juris-

diction over the automobile's manufacturer and importer was assumed, though not at issue. *Id.* at 317-18 (Blackmun, J., dissenting). Regional distributors and retail dealers cannot, according to the Supreme Court, be forced to defend lawsuits in jurisdictions far from their area of business just because a plaintiff brought the product to the jurisdiction. *Id.* at 298.

Far different, however, is the situation of a manufacturer or a primary distributor:

> Hence if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve *directly or indirectly*, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum *State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.*

Id. at 297-98 (emphasis added). To hold otherwise would be to "doom all products liability cases to dismissal from forums other than the place of manufacture or initial sale." Jay, *"Minimum Contacts" as a Unified Theory of Personal Jurisdiction: A Reappraisal*, 59 N.C.L.Rev. 429, 442-43 (1981); *see also* Comment, *Federalism, Due Process, and Minimum Contacts: World-Wide Volkswagen Corp. v. Woodson*, 80 Colum. L.Rev. 1341, 1360-61 n.146 (1980).

Courts have uniformly followed the United States Supreme Court's admonition in *World-Wide Volkswagen* and held manufacturers subject to personal jurisdiction under the stream-

of-commerce theory. *E.g., Nelson v. Park Industries, Inc.*, 717 F.2d 1120 (7th Cir. 1983), *cert. denied*, 104 S. Ct. 1277-78 (1984); *Ford Motor Co. v. Atwood Vacuum Machine Co.*, 392 So. 2d 1305 (Fla. 1981); *Svendsen v. Questor Corp.*, 304 N.W. 2d 428 (Iowa 1981). As the Iowa Supreme Court wrote, even though the actual marketing of the product is done by intermediaries:

> [T]hrough their actions in marketing their product, [the defendants] sought to serve the Iowa market, and therefore should be amenable to the jurisdiction of the Iowa courts. * * * it is reasonable to infer that their commercial transactions resulted in more than insubstantial use and consumption in this state. *See Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill.2d 432, 441-42, 176 N.E.2d 761, 766 (1961). This affords a sufficient basis for the conclusion that *the* [*defendants*] *through the Omaha distributor, indirectly sought to serve the Iowa market, and consequently are subject to suit within this state.*

Id. at 431 (emphasis added). According to the Seventh Circuit, even though the defendants "did not originate the distribution system and do not control it, they did place the flannel shirts in and move them along a stream of commerce destined for retail sale throughout the United States." *Nelson v. Park Industries, Inc.*, 717 F.2d at 1126; *see Bean Dredging Corp. v. Dredge Technology Corp.*, 744 F.2d 1081, 1085 (5th Cir. 1984).

In essence, the "fairness requirement of due process does not extend so far as to permit a manufacturer to insulate itself from the reach of the forum state's long-arm rule by using an intermediary or by professing ignorance of the ultimate destination of its products." *DeJames v. Magnificence*

Carriers, Inc., 654 F.2d 280, 285 (3rd Cir. 1981), *cert. denied*, 454 U.S. 1085 (1981); *accord Hedrick v. Daiko Shoji Co.*, 715 F.2d 1355 (9th Cir. 1983); *Noel v. S. S. Kresge Co.*, 669 F.2d 1150 (6th Cir. 1982); *Shanks v. Westland Equip. and Parts Co.*, 668 F.2d 1165 (10th Cir. 1982). A manufacturer who places its product in the stream of commerce in an effort to serve, directly or indirectly, markets in a jurisdiction is subject to suit in that jurisdiction under *World-Wide Volkswagen*.

Although On-Deck does not have any direct contacts with Minnesota that can be proven in this case, it has a plethora of indirect contacts. It entered into contracts with others to distribute its products throughout North America, Hawaii and the Caribbean, a market which specifically includes Minnesota. The On-Deck trademark and Elston Howard's picture are on the packaging of every weight. Both Frank Hamilton, the owner of On-Deck, and Elston Howard, the president of On-Deck, have traveled the United States extensively marketing their product. On-Deck's distributors have, in fact, attempted to and been quite successful at marketing the product in Minnesota, and On-Deck has profited as a result. Frank Hamilton's claim that he never knew his products were marketed in Minnesota, aside from its incredulity, is irrelevant. On-Deck's distribution contracts and marketing efforts were calculated attempts to create a national market for his product, a market which specifically includes Minnesota. The bat weights arrived here not by some fortuitous happenstance of a plaintiff bringing the product to the jurisdiction as in *World-Wide Volkswagen*, but by the purposeful marketing efforts of On-Deck and On-Deck's distributors. On-Deck, having attempted and succeeded in penetrating the market in Minnesota for bat weights, albeit through distributors, has had numerous contacts with Minnesota.

2. The Nature and Quality of the Contacts

The appellant argues that because this bat weight was found on a field and there is no way of discovering how the weight came to this state, On-Deck's contacts with Minnesota are not of a quality sufficient to support jurisdiction. This argument ignores the fact that often there is no way that a plaintiff can know how a defective product actually weaved its way through commerce's labyrinth. The fact that the manufacturer's goods came to the jurisdiction by an unknown and thereby a possibly circuitous route does not change the fact that the product injured someone in a jurisdiction where the manufacturer can expect to be sued.

In *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E.2d 761 (1961), the Illinois Supreme Court not only did not know how the particular offending product got to the state, it had no idea if any of the manufacturer's other products had ever been in the state. *Id.* at 442, 176 N.E.2d at 766. Rather, the Illinois court inferred sufficient number and quality of contacts as a reasonable assumption from the character of the business. *Id.* The United States Supreme Court found no difficulties with the Illinois court's analysis. *World-Wide Volkswagen*, 444 U.S. at 298. Thus, the plaintiffs' inability to trace the bat weight's route to Minnesota in no way deprives Minnesota of jurisdiction.

The nature of On-Deck's contacts have been for the most part, sales. It has profited by sale of thousands of its bat weights in Minnesota. In a commercial operation, sales are the most tangible contact with a jurisdiction. Although through intermediaries, these sales were accomplished under the marketing contracts for the benefit of On-Deck. Additionally, there was marketing on On-Deck's part. It specifically required that its trademark be placed prominently on

the packages of its product. Elston Howard, the president of the company, was pictured on every package. It can be assumed that its distributors also marketed the product in this state. On-Deck thrust its corporate image into the jurisdiction, both by its own packaging requirements and the actions of its distributors, and profited by it. The nature and quality of On-Deck's contacts weigh in favor of jurisdiction.

3. The Source of the Contacts

The source of the contacts is, in the first instance, from On-Deck itself. It wanted a national market, a market including Minnesota, so it contracted with others to achieve its distribution goals. Through savvy marketing, the bat weight became a desirable item, desirable enough that somebody purchased this bat weight and desirable enough that, when found, it was put to use at its intended purpose. On-Deck will not now be allowed to hide behind the structuring of its distribution system when On-Deck's intent was to enter the market here and profit thereby. Thus, the source and connection of the contacts with the cause of action weigh in favor of jurisdiction.

4. Minnesota's Interest in the Litigation

Minnesota's interest in the litigation is obvious. Minnesota was the site of this accident and a Minnesotan has been severely injured. This factor, albeit of minor consideration, weighs in favor of jurisdiction.

5. The Convenience of the Parties

Finally, all the witnesses of the accident and plaintiffs reside here in Minnesota. Only the defendant resides elsewhere. Minnesota is the convenient and logical forum for this litigation. Again, though of minor interest in comparison to the first three factors, convenience seems to weigh in favor of jurisdiction in Minnesota.

In short, On-Deck sold thousands of its bat weights in Minnesota. The reason the weights were sold here is that On-Deck contracted with General Sports and other national retailers to serve the national market and, specifically, the Minnesota market. It profited thereby. This is purposeful availment by On-Deck of the benefits and corresponding responsibilities of doing business in Minnesota. Traditional notions of fair play and substantial justice dictate that On-Deck should defend this lawsuit in Minnesota; they would be offended if these plaintiffs were limited to suit in New Jersey.

The court of appeals is affirmed.

COYNE, J., took no part in the consideration or decision of this case.

STATE OF MINNESOTA
IN COURT OF APPEALS

C2-84-235

Hennepin County Lansing, Judge

DEAN A. and BARBARA J. ROSTAD,

Appellants,

vs.

ON-DECK, INC., a New Jersey Corporation,

Respondent,

and

GARY GUY WILLEY,

Respondent.

Appellants' Attorney, Leo F. Feeney, Robins, Zelle, Larson & Kaplan, 1210 Minnesota Building, St. Paul, Minnesota 55102.

Respondents' Attorneys, Graham Heikes, Brian N. Johnson, Jardine, Logan & O'Brien, 1350 Northern Federal Bldg., St. Paul, Minnesota 55102.

Endorsed.

Filed September 4, 1984.

WAYNE TSCHIMPERLE
Clerk
Minnesota Appellate Courts

SYLLABUS

Minnesota courts can constitutionally exercise jurisdiction in a products liability action over an out-of-state manufacturer that distributes its products through a nationwide distributor with representatives in Minnesota.

Reversed.

Heard, considered and decided by Lansing, Presiding Judge, Wozniak, Judge, and Forsberg, Judge.

OPINION

LANSING, Judge.

Dean and Barbara Rostad appeal from an order dismissing their products liability action for lack of personal jurisdiction. The Rostads commenced this action in April 1980 seeking recovery of personal injury damages from On-Deck, Inc., a New Jersey corporation. On-Deck's answer alleged, among other things, the affirmative defense of lack of personal jurisdiction. The trial court found On-Deck's contacts with Minnesota insufficient to support long-arm jurisdiction because On-Deck had not personally entered this state. We reverse.

FACTS

On-Deck, Inc., a New Jersey corporation, manufactures a vinyl-covered solid metal bat-weight used to increase the weight of an ordinary baseball bat for practice swings and

warm-up exercises. The ring-shaped weight fits over the handle of a bat and is designed to be secured by the bat's thick end.

In 1978 Gary Guy Willey, a groundskeeper for the City of St. Louis Park, found a bat-weight while cutting grass on a city ballfield. On-Deck admits for purposes of this appeal that it manufactured the weight. Willey allowed his teammates on the Golden Leaf Bar softball team to use the weight during the 1978 softball season. During a game in Minneapolis on August 6, 1978, the 1-1/4-pound weight flew off the bat of a warming-up, or "on-deck," batter and struck the umpire, Dean Rostad, in the head. Rostad was seriously and permanently injured.

The On-Deck bat-weight was invented by Frank Hamilton in 1967. He incorporated in New Jersey under the name "On-Deck" in 1968 and contracted with a foundry to begin manufacture of the product. Shortly after incorporation Hamilton took his bat-weight to General Sportcraft Company, Ltd., a New York corporation authorized to do business in New Jersey. General Sportcraft, a national distributor of sporting goods, was interested in handling the product but said advance promotion and publicity were necessary.

Hamilton subsequently went into partnership with Elston Howard, a prominent professional ballplayer. They traveled extensively, promoting the weight to professional baseball teams and at a sporting goods show. Later in 1968 General Sportcraft and On-Deck entered into a distribution agreement under which On-Deck was the manufacturer and General Sportcraft the promoter and exclusive distributor of On-Deck bat-weights. On-Deck agreed to sell in bulk to General Sportcraft for resale and distribution "throughout the continent of North America, the state of Hawaii, and all islands in the

Caribbean Sea and the Gulf of Mexico." Packages were to be labeled "Elston Howard's On-Deck Bat-Weight." Howard agreed to continue to make promotional appearances.

From 1969 to 1980 General Sportcraft had one or more representatives in Minnesota who sold bat-weights, in addition to other sporting goods, to retail stores throughout the state. After 1973 General Sportcraft was no longer the exclusive distributor of the On-Deck bat-weight; On-Deck began bulk sales to a number of other nationwide distributors, including Sears, K-Mart, and Hillerich & Bradsby Co. At no time, however, did On-Deck itself directly sell any bat-weights in Minnesota.

The trial court held that On-Deck did not have sufficient contacts with Minnesota to permit constitutional exercise of personal jurisdiction under Minnesota's long-arm statute, Minn. Stat. §543.19 (1982), reasoning that On-Deck never personally entered the state through an office, a telephone call, or any sales representatives.

ISSUE

Does an out-of-state manufacturer distributing a product through a nationwide distributor have sufficient contacts with Minnesota to support long-arm jurisdiction in a products liability suit arising in Minnesota?

ANALYSIS

The Minnesota long-arm statute, Minn. Stat. §543.19 (1982), provides for long-arm jurisdiction over a foreign corporation when that corporation commits an act outside of Minnesota that causes injury or property damage inside the state. *Id.* §543.19, subd. 1(d). The statute was drafted in an effort to extend long-arm jurisdiction to the maximum extent allowed by the due process clause of the United States Constitution. *E.g. Vikse v. Flaby*, 316 N.W.2d 276, 281 (Minn.

1982) (citing *Toro Co. v. Ballas Liquidating Co.*, 572 F.2d 1267, 1269 (8th Cir. 1978)). A court may constitutionally exercise jurisdiction over a defendant if the defendant has sufficient "minimum contacts" with the forum state so that requiring the defendant to defend there does not violate "traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). The Supreme Court clarified the meaning of "minimum contacts" in *Hanson v. Denckla*, 357 U.S. 235 (1958), finding that it is "essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Id.* at 253.

The minimum contacts test performs two functions, as explained by the Supreme Court in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). It protects the defendant from burdensome litigation in a distant or inconvenient forum, and it also promotes federalism by ensuring that states "do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *Id.* at 291-92.

To determine the constitutional sufficiency of a defendant's contacts with the state, Minnesota has adopted the five-factor test set out in *Aftanase v. Economy Baler Co.*, 343 F.2d 187, 197 (8th Cir. 1965). *See e.g. Dent-Air, Inc. v. Beech Mountain Air Service, Inc.*, 332 N.W.2d 904 (Minn. 1983). The following factors are considered:

(1) the quantity of contacts,

(2) the nature and quality of contacts,

(3) the source and connection of those contacts to the cause of action,

(4) the interest of the forum state, and

(5) the convenience of the parties.

Id. at 907. The first three factors are given primary consideration, while the last two are considered less important. *Id.*

The factors of forum interest and convenience do not deprive the court of jurisdiction in this case. Minnesota's interest in providing a forum is clear: Rostad is a resident, he sustained the injury in this state, and because the New Jersey statute of limitations has run, Minnesota is the Rostads' only available forum. On-Deck concedes that the convenience of the parties weighs equally. The Rostads' witnesses reside in Minnesota; On-Deck's will likely come from New Jersey. Although it will be expensive for On-Deck to defend in Minnesota, this factor is less important than consideration of On-Deck's contacts with the state. *See Dent-Air, Inc.*, 332 N.W.2d at 909.

The facts applicable to factors (1) and (3) also militate in favor of asserting jurisdiction. On-Deck had a substantial number of contacts with Minnesota. Retail sporting goods stores throughout the state sold On-Deck bat-weights, distributed by General Sportcraft, for 13 years. The Minnesota Twins bought the weights for ten years, and thousands were sold through retail outlets. The "source and connection" of On-Deck's contacts are also closely related to the Rostads' cause of action. On-Deck has stipulated, for purposes of this appeal, that it manufactured the weight that injured Rostad. Rostad's injury thus arose out of a specific forum-related act—the distribution of On-Deck bat-weights to Minnesota retailers and the consequent sale and use of the weight that caused the injury.

The "nature and quality" of On-Deck's contacts with Minnesota requires a more thorough analysis. On-Deck has never

had an office, property, mail or telephone listing, or any sales agents in Minnesota and has never made any direct sales or solicited business in the state. On-Deck argues, therefore, that its contacts with Minnesota are insufficient to support jurisdiction because it has not purposefully availed itself of the benefits and protections of Minnesota law. *See Hanson v. Denckla*, 357 U.S. at 253.

On-Deck's lack of direct contacts with Minnesota does not necessarily preclude personal jurisdiction. In *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 298 (1980), the Supreme Court discussed the "stream-of-commerce" theory of personal jurisdiction in a products liability case. *World-Wide Volkswagen* involved the propriety of an Oklahoma court's exercise of personal jurisdiction over a regional distributor and a retail dealer of foreign-manufactured automobiles. Both defendants were New York corporations who did no business outside of New York, New Jersey and Connecticut. The plaintiffs, also New York residents, were injured in Oklahoma. They argued that the defendants should be subject to suit in Oklahoma because it was foreseeable that an automobile purchased in New York would cause injury in Oklahoma. The Court rejected this argument, determining that foreseeability that a manufacturer's product will end up in a state is not *alone* sufficient to make the manufacturer amenable to suit in that state. *See id.* at 295-96.

The Court went on to note, however, that foreseeability is still a relevant factor. As explained by the Court, "the foreseeability that is critical to due process analysis * * * is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *Id.* at 297. The Court explained in dicta that where the sale of a manufacturer's or distributor's product

> is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.

Id. at 297-98 (citing *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill.2d 432, 176 N.E.2d 761 (1961)). A number of courts have relied on this dicta to sustain jurisdiction in products liability cases where the product has traveled through a chain of distribution before reaching the ultimate consumer. *See e.g. Noel v. S.S. Kresge Co.*, 669 F.2d 1150 (6th Cir. 1982); *Oswalt v. Scripto, Inc.*, 616 F.2d 191 (5th Cir. 1980); and cases cited in Note, *The Long-Arm Reach of the Courts After* Kulko v. Superior Court, 65 Va. L. Rev. 175 (1979).

The "stream-of-commerce" theory satisfies due process requirements because the manufacturer avails itself of the "protections and benefits" of the forum state's laws through the protection those laws provide for the product and through the pecuniary benefit from indirect sales to forum residents. *See e.g. DeJames v. Magnificence Carriers, Inc.*, 654 F.2d 280, 285 (3d Cir.), *cert. denied*, 454 U.S. 1085 (1981). It can fairly be said that On-Deck purposefully availed itself of the privilege of conducting business in Minnesota as a result of On-Deck's relationship with its distributor, General Sportcraft. On-Deck knew that General Sportcraft was a nationwide dis-

tributor and that General Sportcraft actively distributed and promoted On-Deck bat-weights in Minnesota for over ten years. On-Deck received economic benefit from bat-weights sold in Minnesota and legal benefit from the protection Minnesota courts provide for businesses in the state.

In *World-Wide Volkswagen* the Court drew a distinction between a dealer or distributor seeking to serve a limited or local market and a manufacturer or national distributor. *See World-Wide Volkswagen* at 297-98. Here, although On-Deck itself did not sell in Minnesota, it did not confine its market to a limited area. Rather, it marketed its product nationwide through General Sportcraft and its other distributors. On-Deck did nothing to limit sales in Minnesota and, indeed, because of its financial stake in bat-weight sales, actively encouraged and benefited from such sales. On-Deck could clearly foresee that its bat-weights would end up in Minnesota. Although this factor alone is insufficient to support jurisdiction, On-Deck's conduct and connection with Minnesota made it foreseeable that On-Deck might be involved in litigation in the state; thus, it is both reasonable and fundamentally fair for Minnesota to exercise personal jurisdiction over On-Deck. The United States District Court for the Eastern District of Pennsylvania recognized the problem of allowing manufacturers and distributors to profit from nationwide distribution while remaining insulated from liability in *Rockwell International Corp. v. Costruzioni Aeronautiche Giovanni Agusta*, 553 F.Supp. 328, 334 (E.D. Pa. 1982). The *Rockwell* court, finding long-arm jurisdiction over a French corporation that manufactured parts for helicopters sold through a United States distributor, quoted the Third Circuit:

> Underlying the assumption of jurisdiction in these cases is the belief that the fairness requirements of due process

> do not extend so far as to permit a manufacturer to insulate itself from the reach of the forum state's long-arm rule by using an intermediary or by professing ignorance of the ultimate destination of its products.

Rockwell, 553 F.Supp. at 334 (quoting *DeJames v. Magnificence Carriers, Inc.*, 654 F.2d 280, 285 (3d Cir.), *cert. denied*, 454 U.S. 1085 (1981)).

This jurisdictional determination makes it unnecessary to decide the additional issue raised by the Rostads of whether On-Deck waived its jurisdictional defense by its failure to completely answer an interrogatory requesting the bases of the defense.

DECISION

Accordingly, we find that the Minnesota courts may properly exercise in personam jurisdiction over On-Deck. We therefore reverse the trial court's decision.

Reversed.

HARRIET LANSING
August 28, 1984

STATE OF MINNESOTA — DISTRICT COURT
County of Hennepin — Fourth Judicial District

Court File No. 766532

DEAN A. and BARBARA J. ROSTAD,

Plaintiffs,

vs.

ON-DECK, INC., a New Jersey corporation, and GARY GUY WILLEY,

Defendants.

SUPPLEMENTAL ORDER

The above-entitled matter came duly on for hearing before the Honorable Lindsay G. Arthur, a Judge of the District Court, at a special term thereof on December 9, 1983, on Defendant On-Deck's Motion for Summary Judgment.

Leo Feeney, Esq., appeared as counsel for and on behalf of Plaintiffs; Brian N. Johnson, Esq., appeared as counsel for and on behalf of Defendant On-Deck; there was no appearance on behalf of Defendant Gary Guy Willey.

Upon all the files, records, proceedings, and arguments of counsel herein, and the Court being fully advised in the premises,

IT IS ORDERED, that:

1. Defendant On-Deck's Motion for Summary Judgment is granted.
2. The attached Memorandum is incorporated herein by reference.
3. There is no just reason for delay; and Defendant On-Deck is entitled to entry of judgment in its favor.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 22nd day of December, 1983.

By The Court:
LINDSAY G. ARTHUR
Judge of District Court

MEMORANDUM

Defendant On-Deck manufactures a heavy ring which temporarily fits on the end of a baseball bat to enable a player to take practice swings while in the on deck circle instead of swinging two or three bats. The rings are marketed in Defendant's packaging in all fifty states through various national distributors such as Sears, K-Mart, General Sportcraft, and Hillerich & Brandsby. Defendant itself does no retail market-

ing nor does it do any advertising except through the packaging. It maintains no offices, telephones 'etter drops, or indicia of business in any state except New Jersey.

Defendant Willey, while employed as a maintenance person cutting grass in a public ball park, found a ring manufactured by Defendant On-Deck. He put it in use in a baseball team with which he was connected. During a game on August 6, 1978, the ring flew off the bat of a player waiting in the on deck circle and struck Plaintiff who was the umpire, causing serious injuries.

Plaintiff commenced this action in Minnesota, personally serving an appropriate person in Defendant's New Jersey office on April 21, 1980. Defendant On-Deck served its Answer on April 24, 1980, alleging, *inter alia*, lack of jurisdiction of the Minnesota courts as an affirmative defense. On October 25, 1983, after the New Jersey statute of limitations had run, Defendant On-Deck brought on this motion for Summary Judgment for lack of jurisdiction.

The issue is whether Defendant On-Deck had a sufficient connection to Minnesota to support *in personam* jurisdiction.

In addition to legitimate state interest which exists here, the current tests of long-arm jurisdiction use such phrases as "minimum contacts," "chain-related contacts," "expectation of suit," Posnak, "A Uniform Approach to Judicial Jurisdiction after *World-Wide* and the Abolition of the 'Gotcha Theory'." 30 Emory Law Review 729. It's not enough of a connection for the manufacturer of a product that the product is sold in the state if the sale is not made by the manufacturer or an agent of the manufacturer. If such a rule were adopted, every manufacturer who sold exclusively through a national retail chain such as Sears would immediately become liable to defend litigation in all fifty states, contrary to the federality concept of

the Constitution. A manufacturer must in some form personally enter a state, by an office, or a telephone, or a sales representative. The mere entry of the product, even in the manufacturer's package, is not enough.

LGA

STATE OF MINNESOTA — DISTRICT COURT
County of Hennepin — Fourth Judicial District

File No. 766532

DEAN A. and BARBARA J. ROSTAD,

Plaintiffs,

vs.

ON-DECK, INC., a New Jersey corporation,

and

GARY GUY WILLEY,

Defendants.

STATE OF NEW JERSEY—ss
County of

AFFIDAVIT OF FRANK G. HAMILTON

Frank G. Hamilton, being first duly sworn on oath, deposes and says that at all times material herein he was the President of defendant On-Deck, Inc. and has personal knowledge of the facts contained in this Affidavit;

That On-Deck, Inc. is a New Jersey corporation with offices in Westwood, New Jersey, and that it is and was a small closely held corporation with between three and five employees;

That On-Deck, Inc. has never owned, leased, or possessed property within the State of Minnesota;

That On-Deck, Inc. has never had an office, sales outlet or place of business in Minnesota;

That On-Deck, Inc. has never been licensed to do business in Minnesota and has never had an authorized agent for service of process in Minnesota;

That On-Deck, Inc. has never employed any persons in Minnesota, and none of its officers or shareholders have ever resided in Minnesota;

That On-Deck, Inc. has never had a mailing address, telephone listing or bank account in Minnesota, and has never recruited employees from Minnesota;

That On-Deck, Inc. has never been registered with nor licensed by any public agency in Minnesota;

That On-Deck, Inc. has never actively solicited business in Minnesota, nor has it engaged in advertising that is calculated to reach Minnesota markets;

That On-Deck, Inc. has never sold bat weights directly in Minnesota;

That between 1968 and 1973, On-Deck, Inc. sold bat weights in bulk to General Sportcraft, a New Jersey distributor, and that General Sportcraft performed all promotions and coordinated marketing of the product, and that On-Deck, Inc. was not involved in any subsequent sales;

That in 1973, other companies began purchasing On-Deck, Inc.'s bat weights for distribution, including Hillerich and Bradsby, Dryer Corporation, Schramm, Sears & Roebuck, and K-Mart; however, at no time did On-Deck, Inc. make any direct sales of bat weights in Minnesota, and all of On-Deck, Inc.'s sales to distributors occurred in states other than Minnesota;

That On-Deck, Inc. has never been made aware of the specific states into which the product was distributed, although on information and belief, it is speculated that the

product was distributed in all states by entities other than On-Deck, Inc.;

That On-Deck, Inc. was not involved in the distribution of the said product beyond sales to distributors;

That Mrs. Adele Lyons, at all times material herein, has been employed at On-Deck, Inc. as a secretary/stenographer, and that Mrs. Adele Lyons is not an officer, shareholder, director, managing agent, or agent authorized to accept service of process for On-Deck, Inc.;

FURTHER YOUR AFFIANT SAITH NOT, except that he makes this Affidavit in support of On-Deck, Inc.'s motion to dismiss for lack of personal jurisdiction and insufficient service of process.

FRANK G. HAMILTON

Subscribed and sworn to before me this 11th day of October, 1983.

REGINA R. MEANY
Notary Public